

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

IN THE MATTER OF:

PHILLIPS, James S.

Respondent

IN ATTORNEY DISCIPLINE PROCEEDINGS

File Number: D2003-228

CHARGE:

8 C.F.R. § 292.3(b), as set forth in 8 C.F.R. § 1003.102(h),
Conviction of Serious Crimes in a Federal Court of the United
States

APPEARANCES

FOR THE RESPONDENT:

James S. Phillips, Jr. (Pro Se)
2230 N. Oliver, Wichita, KS 67220

FOR THE DHS AND EOIR:

Rachel A. McCarthy, Esquire
Disciplinary Counsel, U.S.
Citizenship and Immigration
Services, Department of Homeland
Security, 70 Kimball Ave., Room
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Disciplinary Counsel
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AMENDED DECISION AND ORDER OF THE ADJUDICATING OFFICIAL

I. PROCEDURAL HISTORY

On September 22, 2004, the Disciplinary Counsel, U.S. Citizenship and Immigration Services (USCIS), initiated disciplinary proceedings against Respondent through the filing of a Notice of Intent to Discipline and petitioned for Respondent's disbarment from practice before the Department of Homeland Security. On October 6, 2004, the Disciplinary Counsel, Executive Office for Immigration Review, joined the proceedings and asked for reciprocal discipline, that

Respondent be similarly sanctioned from practice before the Executive Office for Immigration Review [Board of Immigration Appeals (Board) and the Immigration Courts]. The proceedings were administratively closed on March 1, 2007, upon joint motion of the parties and were re-calendared on December 23, 2011. The Disciplinary Counsel, USCIS, amended the Notice of Intent to Discipline on November 21, 2011. Attached to the amended notice were certified copies of judgments of conviction against Respondent issued by the U.S. District Court for the District of Kansas, including an amended judgment of conviction issued December 15, 2008.

Respondent was an attorney admitted to the practice of law in the State of Kansas. On February 9, 2007, Respondent was found guilty of multiple crimes in the U.S. District Court for the District of Kansas. The District Court convicted him of eight (8) counts of knowingly and willfully making and using a false document, in violation of 18 U.S.C. § 1001 and eight (8) counts of knowingly and willfully forging and falsely making a document prescribed by statute and regulation for entry into and as evidence of authorized stay and employment in the United States, in violation of 18 U.S.C. § 1546(a). On October 1, 2008, the Tenth Circuit Court of Appeals affirmed Respondent's convictions for eight counts under 18 U.S.C. § 1001 and reversed Respondent's remaining convictions under 18 U.S.C. § 1546(a). The conviction of eight offenses under 18 U.S.C. § 1001 is a final conviction, a petition for certiorari to the United States Supreme Court having been denied on January 12, 2009.

Respondent had the opportunity to respond to the Notice of Intent to Discipline (NID) and Amended NID and did so by submitting written responses on February 24, 2007 and December 22, 2011. Disciplinary Counsel, USCIS, submitted a Motion for Summary Adjudication on January 4, 2012, and requested an order of expulsion.¹

For the reasons that follow, the Court will grant USCIS Disciplinary Counsel's motion for summary adjudication.

II. DISCUSSION

Respondent admits that he was convicted by the U.S. District Court for the District of Kansas for eight counts under 18 U.S.C. § 1001. *See* Response to Notice of Intent to Discipline, pages 1-2. He admits that he surrendered his license to practice law in Kansas and is not licensed to practice law in any other State or territory. Moreover, he does not dispute that his conduct violated 8 Code of Federal Regulations (C.F.R.) § 292.3(b) on the ground set forth in 8 C.F.R. § 1003.102(h). *Id.* at page 2.

Respondent argues, however, that the Court lacks authority to discipline him. *Id.* at pages 2-3. He contends that the Board can only discipline an attorney "who is eligible to practice law" and is a member of the bar in good standing because only such an individual meets the definition for a "practitioner" set forth in 8 C.F.R. § 1001(f). *Id.* He states that, because he surrendered his bar membership in Kansas, the Board does not have jurisdiction to discipline him. *Id.*

¹ The word, "expelled," was replaced by "disbarred," and the word, "expulsion," was replaced by the word, "disbarment," and other miscellaneous changes made to 8 C.F.R. §§ 1003 and 1292, effective January 13, 2012. Hence, this amended decision and any changes are underlined.

Respondent further claims that disciplinary proceedings against him are moot. He states that there is no public interest in disciplining him since he is not eligible to appear before the Board or the Immigration Courts. Respondent also requests a hearing. *Id.* at page 4.

In the Motion for Summary Adjudication, USCIS Disciplinary Counsel points out that Respondent does not deny the criminal convictions that form the basis for the disciplinary proceedings against him. *See* Motion for Summary Adjudication, page 1. USCIS Disciplinary Counsel states that the record includes certified copies of the District Court judgments against him and also argues that the Board has rejected Respondent's arguments above regarding jurisdiction and mootness. *See Matter of Ramos*, 23 I&N Dec. 843 (BIA 2005).

The Code of Federal Regulations provides that any practitioner subject to summary disciplinary proceedings may request a hearing. *See* 8 C.F.R. § 1003.106(a). However, a practitioner is only entitled to such a hearing if he can show *prima facie* "that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings." *Id.* The Regulations further provide that, in situations involving criminal convictions, a certified copy of the court record, docket entry, or plea "shall be conclusive evidence of the commission of the crime in any summary disciplinary proceeding based thereon." *See* 8 C.F.R. § 1003.103(b).

In the present case, the record includes certified judgments from the U.S. District Court of Kansas showing that Respondent was convicted of eight counts of knowingly and willfully making and using false documents. *See* Notice of Intent to Discipline, Attachment 1. Respondent also admits to having been convicted of these charges. *See* Response to Notice of Intent to Discipline, pages 2-3. The record further establishes that he had an opportunity to contest the charges against him and has completed all available avenues for appeal. *Id.* The Court finds therefore that the judgments from the District Court constitute conclusive evidence of Respondent's criminal convictions. The Court finds that Respondent's conduct violated 8 C.F.R. § 292.3(b) on the ground set forth in 8 C.F.R. § 1003.102(h) and that he cannot show that there is a material issue of fact in dispute and failed to do so. *See* 8 C.F.R. § 1003.106(a). Failure to make such a *prima facie* showing shall result in the denial of a request for a hearing and issuance of a final order under 8 C.F.R. § 1003.106(a).² Accordingly, the Court concludes no hearing is required.

Respondent alternatively argues that the Board lacks the capacity to discipline him because he is not an "attorney in good standing" as defined under 8 C.F.R. § 1001(f). This contention contradicts the plain language of the Regulations, which explicitly authorizes the Board to discipline attorneys who have been disbarred or forced to resign due to criminal conduct. *See* 8 C.F.R. § 1003.103(a). In addition, the Board has rejected this argument in precedent decisions. *See Matter of Ramos*, 23 I&N Dec. 843, 846-47 (BIA 2005). In *Matter of Ramos*, an attorney similarly argued that the Board lacked jurisdiction to discipline him because he had been disbarred. The Board found that disciplinary sanctions were applicable to him despite his disbarment. *Id.* The Court finds therefore that it has the authority to sanction Respondent for his violation of 8 C.F.R. § 292.3(b) on the ground set forth in 8 C.F.R. § 1003.102(h).

² As amended, January 13, 2012.

Accordingly, the Court grants USCIS Disciplinary Counsel's motion for summary adjudication. In light of the severity and number of offenses for which the Court finds Respondent has a final conviction in a Federal Court of the United States and which convictions were related to his immigration law practice, the Court concludes that Respondent should be disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security.

The Court enters the following order:

ORDER

It is Ordered that:

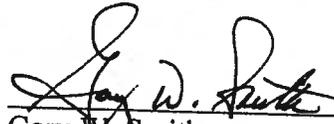
USCIS Disciplinary Counsel's motion for summary adjudication should be and hereby is **GRANTED**.

It is Further Ordered that:

Respondent should be and hereby is disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security.

FEB -8 2012

Date



Gary W. Smith
Assistant Chief Immigration Judge
Adjudicating Official